

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

XIUFANG SITU, et al.,

Plaintiffs,

v.

MICHAEL O. LEAVITT,

Defendant.

NO. C06-2841 TEH

ORDER VACATING
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION
WITHOUT PREJUDICE

The Court is in receipt of Plaintiffs' motion for class certification, Defendant's opposition thereto, and Plaintiffs' unopposed request for an extension of time and page limits for their reply brief. Upon careful review of the parties' papers, the Court finds good cause to exercise its inherent discretion to manage its docket by VACATING Plaintiffs' motion for class certification without prejudice. As Defendant points out in his opposition papers, the deadline for responding to the complaint is not until June 30. Because Defendant intends to file a motion to dismiss some or all of Plaintiffs' claims, the Court agrees that it would be prudent to defer consideration of Plaintiffs' motion for class certification until after Defendant's potentially dispositive motion is resolved. This is especially the case where, as here, Defendant intends to raise challenges to the Court's jurisdiction. As the Ninth Circuit has explained, "[u]ntil [plaintiffs] can show themselves aggrieved in the sense that they are entitled to the relief sought, there is no occasion for the court to wrestle with the problems presented in considering whether the action may be maintained on behalf of the [proposed] class. Until a claim on their own behalf is alleged by the named plaintiffs they have failed to allege an actual case or controversy." *Boyle v. Madigan*, 492 F.2d 1180, 1182 (9th Cir. 1974).

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiffs' motion for class certification is VACATED without prejudice. To the extent that Plaintiffs' case survives Defendant's intended motion to dismiss, Plaintiffs may renew their motion after the Court issues its ruling on Defendant's motion.

2. Plaintiffs' request for an extension of time and page limits is VACATED as moot. Plaintiffs may renew their request at the appropriate time, but the parties are advised that the Court will not grant a stipulation to continue the briefing schedule without a corresponding continuance of the hearing date.

3. Defendant shall, as indicated in his opposition, file his intended motion to dismiss on or before **June 30, 2006**. The motion shall be noticed for hearing on **Monday, August 7, 2006, at 10:00 AM**, unless the parties are unavailable on that date and wish to schedule the hearing for a subsequent Monday. The briefing schedule under the Civil Local Rules shall apply unless otherwise ordered.

IT IS SO ORDERED.

Dated: 06/02/06



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT